



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 2567

DATE SCANNED 6/24/13

SCANNER NO. 2

SCAN OPERATOR EES

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2012 SEP 28 PM 12:05

September 28, 2012

MEMORANDUM

SENSITIVE

TO: The Commission

THROUGH: *fp* Alec Palmer *Am*
Staff Director

FROM: Patricia C. Orrock *PC for PO*
Chief Compliance Officer

Debbie Chacona *DC*
Assistant Staff Director
Reports Analysis Division

BY: *JP* Jodi Winship/Sari Pickerall *JP*
Compliance Branch

SUBJECT: Reason To Believe Recommendation – 2012 12 Day Pre-Primary
Report (Florida)

Attached is a list of political committees and their treasurers who failed to timely file the 2012 12 Day Pre-Primary Report for the Florida Primary Election in accordance with 2 U.S.C. § 434(a). The 12 Day Pre-Primary Report was due on August 2, 2012 and the Primary Election was held on August 14, 2012.

The committees listed on the attached RTB Circulation Report failed to file the election sensitive report by the required due date. Election sensitive reports filed more than four days prior to the election are considered late, and reports not filed more than four days prior to the election are considered not filed. In accordance with the schedule of civil money penalties for reports at 11 CFR § 111.43, these committees should be assessed the civil money penalties highlighted on the attached circulation report.

Recommendation

1. Find reason to believe that the political committees and their treasurers listed on the RTB Circulation Report violated 2 U.S.C. § 434(a) and make a preliminary determination that the civil money penalties would be the amounts indicated on the RTB Circulation Report.
2. Send the appropriate letters.

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Federal Election Commission
Reason to Believe Circulation Report
2012 PRE-PRIMARY Election Sensitive 08/02/2012 AUTH (CT, FL, WI, MN)

| AF# | Committee ID | Committee Name | Candidate Name | Treasurer | Threshold | PV | Receipt Date | Days Late | LOA | RTB Penalty |
|------|--------------|-----------------------------|----------------|------------------------|-----------|----|--------------|-----------|----------------|-------------|
| 2567 | C00478818 | JIM HORN ELECTION COMMITTEE | HORN, JIM | OLIVIA JULIA HORN | \$182,905 | 0 | | Not Filed | \$36,581 (est) | \$1,400 |
| 2568 | C00504688 | OTERO FOR CONGRESS | OTERO, EVELIO | TERESA GAFFNEY SUSSMAN | \$164,912 | 0 | 8/8/2012 | 6 | \$22,119 | \$210 |

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Reason To Believe Recommendation - 2012)
12 Day Pre-Primary Report (FL):)
JIM HORN ELECTION COMMITTEE,) AF# 2567
and OLIVIA JULIA HORN as treasurer;)
OTERO FOR CONGRESS, and GAFFNEY) AF# 2568
SUSSMAN, TERESA as treasurer;)

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on October 02, 2012 the Commission took the following actions on the Reason To Believe Recommendation - 2012 12 Day Pre-Primary Report (FL) as recommended in the Reports Analysis Division's Memorandum dated September 28, 2012, on the following committees:

AF#2567 Decided by a vote of 6-0 to: (1) find reason to believe that JIM HORN ELECTION COMMITTEE, and OLIVIA JULIA HORN as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2568 Decided by a vote of 6-0 to: (1) find reason to believe that OTERO FOR CONGRESS, and GAFFNEY SUSSMAN, TERESA as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

October 3, 2012
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 3, 2012

Olivia Julia Horn, in official capacity as Treasurer
Jim Horn Election Committee
2740 SW Martin Downs Blvd., Ste. 210
Palm City, FL 34990

C00478818
AF#: 2567

Dear Ms. Horn:

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file a 12 Day Pre-Primary Report of Receipts and Disbursements in any calendar year during which there is a regularly scheduled election for which the candidate is seeking election or nomination for election. This report, covering the period through July 25, 2012, shall be filed no later than August 2, 2012. 2 U.S.C. 434(a). Records at the Commission indicate that this report was not filed prior to four (4) days before the election. You should file the report if you have not already done so.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 2 U.S.C. § 434(a). 2 U.S.C. § 437g(a)(4). On October 2, 2012, the FEC found that there is reason to believe ("RTB") that Jim Horn Election Committee and you, in your official capacity as treasurer, violated 2 U.S.C. § 434(a) by failing to file timely this report on or before August 2, 2012. Based on the FEC's schedules of civil money penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at the RTB stage is \$1,400. Please see the attached copy of the Commission's administrative fine regulations at 11 CFR §§ 111.30-111.55. Attachment 1. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. See <http://www.fec.gov/af/af.shtml>. 11 CFR § 111.34. Your payment of \$1,400 is due within forty (40) days of the finding, or by November 11, 2012, and is based on these factors:

Sensitivity of Report: Election Sensitive
Level of Activity: \$36,581
Number of Days Late: Not Filed
Number of Previous Civil Money Penalties Assessed: 0

At this juncture, the following courses of action are available to you:

1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty

If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response, including the AF# found at the top of page 1 under your

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committee's identification number, to the FEC's Office of Administrative Review, 999 E Street, NW, Washington, DC 20463. Your response must be received within forty (40) days of the Commission's RTB finding, or November 11, 2012. 11 CFR § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty, and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 CFR § 111.36(c).

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 CFR § 111.35(b). In order for a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to, (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 CFR § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to, (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 CFR § 111.35(ii).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S. district court under 2 U.S.C. § 437g. 11 CFR § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that Jim Horn Election Committee and you, in your official capacity as treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.* The FEC may take any and all appropriate action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 CFR § 111.51(a)(2).

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3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the calculated civil money penalty, send the enclosed remittance form, along with your payment, to the FEC at the address on page 4. Upon receipt of your payment, the FEC will send you a final determination letter.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. § 437g(a)(2). It will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and 437g(a)(12)(A) until it is placed on the public record in accordance with 11 CFR § 111.42, unless you notify the FEC in writing that you wish the matter to be made public.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Sari Piekerall in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,



Caroline C. Hunter
Chair

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ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at RTB is \$1,400 for the 2012 Pre-Primary Report.

Please mail this remittance with a check or money order made payable to the Federal Election Commission to the following address:

Federal Election Commission
P.O. Box 979058
St. Louis, MO 63197-9000

If you choose to send your remittance and payment by courier or overnight delivery, please use this address:

U.S. Bank - Government Lockbox
FEC #979058
1005 Convention Plaza
Attn: Government Lockbox, SL-MO-C2GL
St. Louis, MO 63101

The remittance and your payment are due by November 11, 2012. Upon receipt of your remittance and payment, the FEC will send you a final determination letter.

PAYMENTS BY PERSONAL CHECK

Personal checks will be converted into electronic funds transfers (EFTS). Your account will be electronically debited for the amount on your check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: Jim Horn Election Committee

FEC ID#: C00478818

AF#: 2567

PAYMENT DUE DATE: November 11, 2012

PAYMENT AMOUNT DUE: \$1,400

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2012 DEC 18 PM 12:47

December 14, 2012

MEMORANDUM

SENSITIVE

TO: The Commission

THROUGH: Alec Palmer *AP*
Staff Director

FROM: Patricia C. Orrock *PC for PO*
Chief Compliance Officer

Debbie Chacona *DC*
Assistant Staff Director
Reports Analysis Division

BY: *JW* Jodi Winship/Sari Pickeraff *SP*
Reports Analysis Division
Compliance Branch

SUBJECT: Administrative Fine Program – Final Determination Recommendation for the
2012 12 Day Pre-Primary Report (Florida)

Attached are two lists of political committees and their treasurers against which the Commission has found reason to believe (RTB) and assessed proposed civil money penalties calculated at RTB for failure to file or failure to timely file the 2012 12 Day Pre-Primary Report (Florida). The first list represents the committees that have paid the civil money penalty and the second list represents the committees that have not paid the civil money penalty. The committees that have not paid have been given at least forty (40) days from the date of the Commission's RTB finding to remit payment.

In accordance with 11 CFR § 111.34 and 11 CFR § 111.40, the Commission shall send a final determination notice to those respondents that have either paid or not paid the civil money penalty.

RAD Recommendation

- (1) Make final determination that the political committees and their treasurers on the attached report violated 2 U.S.C. § 434(a) and assess the final civil money penalties so indicated.
- (2) Send the appropriate letters.

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12/14/2012 2:34 PM

Federal Election Commission
FD Circulation Report Fine Not Paid
2012 PRE-PRIMARY Election Sensitive 08/02/2012 AUTH (FL)

| AF# | Committee Name | Candidate Name | Committee ID | Treasurer | Receipt Date | Days Late | LOA | PV | RTB Date | RTB Penalty | Days Since RTB | FD Penalty |
|------|-----------------------------|----------------|--------------|-------------------|--------------|-----------|----------------|----|------------|-------------|----------------|------------|
| 2567 | JIM HORN ELECTION COMMITTEE | HORN, JIM | C00478818 | OLIVIA JULIA HORN | | Not Filed | \$36,581 (est) | 0 | 10/02/2012 | \$1,400 | 73 | \$1,400 |

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12/14/2012 2:33 PM

Federal Election Commission
FD Circulation Report Fine Paid
2012 PRE-PRIMARY Election Sensitive 08/02/2012 AUTH (FL)

| AF# | Committee Name | Candidate Name | Committee ID | Treasurer | Receipt Date | Days Late | LOA | PV | RTB Date | RTB Penalty | Final Money Penalty | Date Paid | Amount Paid |
|------|--------------------|----------------|--------------|---------------------------|--------------|-----------|----------|----|------------|-------------|---------------------|------------|-------------|
| 2568 | OTERO FOR CONGRESS | OTERO, EVELIO | C00504688 | TERESA GAFFNEY SUSSMAN | 08/08/2012 | 6 | \$22,119 | 0 | 10/02/2012 | \$210 | \$210 | 11/13/2012 | \$210 |

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Administrative Fine Program - Final)
Determination Recommendation for the)
2012 12 Day Pre-Primary Report (FL):)
JIM HORN ELECTION COMMITTEE,) AF# 2567
and OLIVIA JULIA HORN as treasurer;)
OTERO FOR CONGRESS, and GAFFNEY) AF# 2568
SUSSMAN, TERESA as treasurer;)

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on December 19, 2012 the Commission took the following actions on the Administrative Fine Program - Final Determination Recommendation for the 2012 12 Day Pre-Primary Report (FL) as recommended in the Reports Analysis Division's Memorandum dated December 14, 2012, on the following committees:

AF#2567 Decided by a vote of 6-0 to: (1) make a final determination that JIM HORN ELECTION COMMITTEE, and OLIVIA JULIA HORN as treasurer , violated 2 U.S.C. 434(a) and assess the final civil money penalty so indicated; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2568 Decided by a vote of 6-0 to: (1) make a final determination that OTERO FOR CONGRESS, and GAFFNEY SUSSMAN, TERESA as treasurer , violated 2 U.S.C. 434(a) and assess the final civil money penalty so indicated; (2) send the appropriate

Federal Election Commission
Certification for Administrative Fines
December 19, 2012

Page 2

letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub
voted affirmatively for the decision.

Attest:

December 20, 2012
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 20, 2012

Olivia Julia Horn, in official capacity as Treasurer
Jim Horn Election Committee
2740 SW Martin Downs Blvd., Ste. 210
Palm City, FL 34990

C00478818
AF#: 2567

Dear Ms. Horn:

On October 2, 2012, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Jim Horn Election Committee and its treasurer violated 2 U.S.C. § 434(a) for filing late or failing to file the 2012 Pre-Primary Report. By letter dated October 3, 2012, the Commission sent notification of the RTB finding that included a civil money penalty calculated at the RTB stage of \$1,400 in accordance with the schedule of penalties at 11 CFR § 111.43. Within forty (40) days of the FEC's RTB finding, its treasurer was required to either transmit payment of the calculated civil money penalty or submit a written response challenging either the RTB finding or the calculated civil money penalty. You must also file the 2012 Pre-Primary Report if you have not already done so.

The FEC did not receive payment of the calculated civil money penalty or a written response within the time permitted. The FEC made a final determination on December 19, 2012 that you, in your official capacity as treasurer, and Jim Horn Election Committee violated 2 U.S.C. § 434(a) and assessed a civil money penalty in the amount of \$1,400 in accordance with 11 CFR § 111.43. The civil money penalty is based on these factors:

Election Sensitivity of Report: Election Sensitive
Level of Activity: \$36,581
Number of Days Late: Not Filed
Number of Previous Civil Money Penalties Assessed: 0

At this juncture, the following courses of action are available to you:

1. If You Choose to Appeal the Final Determination and/or Civil Money Penalty

If you choose to appeal the final determination, you should submit a written petition, within thirty (30) days of receipt of this letter, to the district court of the United States for the district in which the committee or treasurer reside, or transact business, requesting that the final

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determination be modified or set aside. See 2 U.S.C. § 437g(a)(4)(C)(iii). Your failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondents' right to present such argument in a petition to the district court under 2 U.S.C. § 437g. 11 CFR § 111.38.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Appeal

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA") as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 *et seq.* If you do not pay this debt within thirty (30) days (or file a written petition to a federal district court - see below), the Commission will transfer the debt to the U.S. Department of the Treasury ("Treasury") for collection. Within five (5) days of the transfer to Treasury, Treasury will contact the debtor and request payment. Treasury currently charges a fee of 28% of the civil money penalty amount for its collection services. The fee will be added to the amount of the civil money penalty that you owe. Should Treasury's attempts fail, Treasury will refer the debt to a private collection agency ("PCA"). If the debt remains unpaid, Treasury may recommend that the Commission refer the matter to the Department of Justice for litigation.

Actions which may be taken to enforce recovery of a delinquent debt by Treasury may also include: (1) offset of any payments, which the debtor is due, including tax refunds and salary; (2) referral of the debt to agency counsel for litigation; (3) reporting of the debt to a credit bureau; (4) administrative wage garnishment; and (5) reporting of the debt, if discharged, to the IRS as potential taxable income. In addition, under the provisions of DCIA and other statutes applicable to the FEC, the debtor may be subject to the assessment of other statutory interest, penalties, and administrative costs.

In accordance with the DCIA, at your request, the agency will offer you the opportunity to inspect and copy records relating to the debt, the opportunity for a review of the debt, and the opportunity to enter into a written repayment agreement.

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the civil money penalty, send the enclosed remittance form, along with your payment, to the address on page 4 within thirty (30) days of receipt of this letter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. The file will be made a part of the public record pursuant to 11 CFR § 111.42(b). Although the file must be placed on the public record within thirty (30) days from the date of the Commission's notification, this could occur at anytime following certification of the Commission's vote.

If you have any questions regarding the payment of the civil money penalty, please contact Sari Pickerall at Federal Election Commission, 999 E St., NW, Washington, DC 20463, or our toll free number (800) 424-9530 (at the prompt, press 5) or (202) 694-1130.

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On behalf of the Commission,

Caroi C. Hunter

Caroline C. Hunter
Chair

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ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.43, the civil money penalty is \$1,400 for the 2012 Pre-Primary Report.

This penalty should be paid by check or money order made payable to the Federal Election Commission. It should be sent by mail to:

Federal Election Commission
PO Box 979058
St. Louis, MO 63197-9000

If you choose to send your payment by courier or overnight delivery, please use this address:

U.S. Bank - Government Lockbox
FEC #979058
1005 Convention Plaza
Attn: Government Lockbox, SL-MO-C2GL
St. Louis, MO 63101

The form and payment are due within thirty (30) days of receipt of this letter.

Payments by Personal Check

Personal checks will be converted into electronic funds transfers (EFTs). Your account will be electronically debited for the amount on the check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: Jim Horn Election Committee

FEC ID#: C00478818

AF#: 2567

PAYMENT AMOUNT DUE: \$1,400

13092684252

**U.S. Department of the Treasury
Financial Management Service
Debt Collection Programs**

(Cross-Servicing Program and Treasury Offset Program)

Calendar Year 2013 Annual Debt Certification Agreement for Federal Nontax Debts

This Annual Debt Certification Agreement for Federal Nontax Debts (Certification Agreement) is submitted by: (Creditor Agency) Federal Election Commission (FEC)

Section I: Background

- A. The U.S. Department of the Treasury, Financial Management Service (FMS), provides debt collection services to Federal agencies that are owed delinquent debt.
- B. Federal agencies are generally required to submit debts that have been delinquent for 180 days to FMS for debt collection services, and may submit debts sooner if the necessary prerequisites are met. See 31 U.S.C. §§ 3711(g) and 3716(c).
- C. Upon submitting debts to FMS for debt collection services, Federal agencies are required to certify to FMS, among other things, that the debts are valid, legally enforceable, there are no bars to collection, and all requisite due process has been completed, as set forth in this Certification Agreement.
- D. The definitions of terms used in this Certification Agreement are in Attachment A, Definitions of Terms Used in Certification Agreement.

Section II: General Provisions

The Creditor Agency understands and agrees to the following:

- A. **Scope.** The provisions of this Certification Agreement apply to all Debts submitted by Electronic Transmission on or after the date of the Certification Agreement by the Creditor Agency to FMS for collection through the Cross-Servicing Program and/or the Treasury Offset Program.
- B. **Certification Authority.** Only an individual with delegated authority to certify a Debt on behalf of the Creditor Agency will submit a Debt to FMS via an Add Record or Update Record. The Creditor Agency will provide a copy of this Certification Agreement to any such individual.

C. Changes to Debt Information.

1. The Creditor Agency understands its obligation to notify FMS: (a) of any change in the amount, validity, or legal enforceability of the Debt; and (b) if the Debt becomes subject to circumstances that legally preclude or bar collection.
2. The Creditor Agency authorizes FMS to Update Records on its behalf, in accordance with criteria established by FMS, for the purpose of adding alias Debtor name information for a Debt certified by the Creditor Agency. Creditor Agency will notify FMS as soon as it learns that any such updates are incorrect.

Section III: Debt Certification

The Creditor Agency understands that by submitting a Debt to FMS via an Add Record or Update Record, the individual submitting the Debt is certifying to FMS, in writing, under penalty of perjury, that, to the best of his or her knowledge and belief, the following is true and correct:

A. General Prerequisites for Collection.

1. **Valid Debts.** The Creditor Agency has made a final determination that the Debt is valid and legally enforceable in the amount stated, and that the Debt is not subject to any circumstances that legally preclude or bar collection.
2. **Delinquent Debts.** The Debt is delinquent, and the Debtor is not paying the Debt in accordance with any repayment plan agreed to by the Creditor Agency.
3. **Interest, Penalties, and Administrative Costs.** The Creditor Agency has complied with all of the provisions of 31 U.S.C. § 3717 and 31 CFR 901.9, as well as other statutes, regulations, and policies applicable to Creditor Agency's assessment of interest, penalties, and administrative costs on the Debt. The Creditor Agency has provided a written notice to the Debtor explaining the Creditor Agency's requirements concerning the assessment of interest, penalties, and administrative costs.
4. **Debtor Disputes.** The Creditor Agency has considered any and all evidence presented by the Debtor disputing the Creditor Agency's determination about the Debt, and there are no pending appeals of such determination that would preclude collection of the Debt.
5. **Collection Efforts.** The Creditor Agency has made reasonable efforts to obtain payment of the Debt, including, at a minimum, by demanding payment of the Debt.
6. **Creditor Agency Profile Form.** The Creditor Agency Profile Form has been completed by the Creditor Agency and is accurate and up-to-date.

- B. General Prerequisites for Collection by Offset, including Tax Refund Offset.** If, in the Creditor Agency Profile Form, the Creditor Agency has authorized FMS to collect the Debt by offsetting Federal and State tax and nontax payments:

- 13092684255
1. ***Compliance with Offset Laws.*** The Creditor Agency has complied with all of the provisions of 31 U.S.C. §§ 3716 and 3720A, 31 CFR Part 285, and the Federal Claims Collection Standards (31 CFR Parts 900-904), as may be amended, as well as other statutes, regulations and policies applicable to the collection of the Debt by offset.
 2. ***Due Process Prerequisites.*** At least 60 days prior to the Certification Date, the Creditor Agency has provided, or made a reasonable attempt to provide, in accordance with applicable offset regulations, each Debtor with:
 - a. a written notification, at the Debtor's most current known address, of the nature and the amount of the Debt, the intention of the Creditor Agency to collect the Debt through offset, including offset of Federal and State payments, and an explanation of the rights of the Debtor;
 - b. an opportunity to inspect and copy the records of the Creditor Agency with respect to the Debt;
 - c. an opportunity for review of the Creditor Agency's determination with respect to the Debt, including an opportunity to present evidence that all or part of the Debt is not delinquent or legally enforceable; and
 - d. an opportunity to enter into a written repayment agreement with the Creditor Agency.
 3. ***Due Process Prerequisites for Certain Older Debts.*** For a Debt outstanding more than ten years on or before December 28, 2009, the Creditor Agency sent the notice described in Section III.B.2.a to the last known address of the Debtor after the Debt was outstanding for more than ten years, and afforded the Debtor the opportunities described in Sections III.B.2.b. - III.B.2.d. at that time. This requirement does not apply to any Debt that could be collected by offset without regard to any time limitation prior to December 28, 2009.

C. *Prerequisites for Collection by Federal Salary Offset.* If, through a Salary Offset Instruction, the Creditor Agency has authorized FMS to collect the Debt by offsetting Federal salary payments:

1. ***Compliance with Federal Salary Offset Laws.*** The Creditor Agency has complied with all of the provisions of 5 U.S.C. § 5514, 5 CFR §§ 550.1101-1110, and 31 CFR 285.7, as may be amended, as well as other statutes, regulations and policies applicable to collection by salary offset; and
2. ***Due Process Prerequisites.*** At least 60 days prior to the Certification Date, the Creditor Agency has provided, or made a reasonable attempt to provide, in accordance with applicable offset regulations, each Debtor with the notification and opportunities required by Sections III.B.2. and III.B.3., and any other notices, opportunities, or considerations required for Federal salary offset.

D. **Consumer Reporting Agencies.** If, in the Creditor Agency Profile Form, the Creditor Agency has authorized FMS to disclose Debts to consumer reporting agencies:

1. **Compliance with Consumer Reporting Agency Requirements.** The Creditor Agency has complied with all of the provisions of 31 U.S.C. § 3711(s) and the Federal Claims Collection Standards, as well as other statutes, regulations, and policies applicable to the reporting of a delinquent Debt to consumer reporting agencies.
2. **Notice Prerequisites.** At least 60 days prior to the Certification Date, the Creditor Agency provided the Debtor with:
 - a. notification that the Debt is overdue and the Creditor Agency intends to disclose that the Debtor is responsible for the Debt to a consumer reporting agency;
 - b. the specific information to be disclosed to the consumer reporting agency; and
 - c. the Debtor's rights to an explanation of the claim, dispute the information in the Creditor Agency's records about the claim, and an administrative appeal or review of the claim; and
3. **Review Prerequisites.** Upon the request of a Debtor, the Creditor Agency has provided for a review of the Debtor's claim(s), including an opportunity for reconsideration of the initial decision on the Debt.

Section IV: Certification

By signing below, I certify that I have delegated authority to execute this Certification Agreement on behalf of the head of Creditor Agency and understand this agreement applies to all debts submitted by Electronic Transmission on or after the date of the Certification Agreement to FMS for collection through the Cross-Servicing Program and/or the Treasury Offset Program.


Signature

Judy Berning

Print Name

Chief Finance Officer

Title


Date

U.S. Department of the Treasury
Financial Management Service
Debt Collection Programs

(Cross-Servicing Program and Treasury Offset Program)

Annual Debt Certification Agreement for Federal Nontax Debts

ATTACHMENT A

Definitions of Terms Used in Certification Agreement

For the purposes of this Certification Agreement:

1. **Add Records.** "Add Records" means the addition of new Debts, by Electronic Transmission, to the Cross-Servicing Program or TOP, by the Creditor Agency with an instruction by the Creditor Agency directing the Financial Management Service (FMS) to take collection action on the Debt, in accordance with the specification in the FMS Technical Guidance. "Add Records" occurs when the Creditor Agency submits a Debt to FMS unless the Creditor Agency explicitly instructs FMS not to take collection action (in accordance with the specifications of the FMS Technical Guidance). As further specified in the FMS Technical Guidance, "Add Records" can be accomplished either through a batch or manual process.
2. **Certification Date.** "Certification Date" means the date of the Electronic Transmission of the Debt.
3. **Creditor Agency Profile Form.** "Creditor Agency Profile Form" means the document(s) the Creditor Agency completes to provide information to FMS, including, among other things, what tools FMS is authorized to use to collect Debts on behalf of the Creditor Agency, and contact information for the Creditor Agency's personnel who are available to assist FMS with questions related to the transferred Debt. The Creditor Agency Profile Form is an FMS document that FMS sends to agencies for completion.
4. **Cross-Servicing Program.** "Cross-Servicing Program" means FMS's debt collection program in which FMS uses a variety of debt collection tools, including TOP, to collect delinquent nontax debts on behalf of Federal agencies.
5. **Debt.** "Debt" means any federal nontax debt, any information about such a debt, any information about the Debtor associated with the debt, and any update, change, or modification to such information.
6. **Debtor.** "Debtor" means a person who owes a Debt.
7. **Debtor Detail Screen.** "Debtor Detail Screen" means the screen in the TOP Web Client (as defined in FMS Technical Guidance) on which a Debt can be entered.

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8. **Electronic Transmission.** "Electronic Transmission" means any transmission of information to FMS from the Creditor Agency via any form of electronic media including, but not limited to, tapes, diskettes, and on-line access through an Add Records, an Update Records, or a Salary Offset Instruction.
9. **FMS Technical Guidance.** "FMS Technical Guidance" means the technical guidance issued by FMS that, among other things, instructs agencies how to Add Records and Update Records. "FMS Technical Guidance" includes:
- a. ***Direct Referrals to TOP.*** For direct referrals to TOP, "FMS Technical Guidance" includes:
- i. "Treasury Offset Program Agency Guide: The Official Federal Agency Guide to the Treasury Offset Program," version 2010.3, as updated from time-to-time;
 - ii. "Treasury Offset Program: Enhanced Record Layouts Version 3.2 with Definitions, Error Codes and Layout Mapping," as updated from time-to-time;
 - iii. "Integrated Agency Interface File Formats," version 3.30t, as updated from time-to-time;
 - iv. "Treasury Offset Program: The Online Client Agency User Guide," version 1.0, as updated from time-to-time; and
 - v. Any other guidance issued by FMS providing technical specifications for how to refer Debts directly to TOP.
- b. ***Referrals to the Cross-Servicing Program.*** For referrals to the Cross-Servicing Program, "FMS Technical Guidance" includes:
- i. "Integrated Agency Interface File Format For Cross-Servicing," version 3.30.1, as updated from time-to-time;
 - ii. "XDC FedDebt Referral File Format: Electronic Case Entry for Cross-Servicing," as updated from time-to-time;
 - iii. "FedDebt Online Functionality: Creating a Case Online," revised 12/2010, as updated from time-to-time;
 - iv. "Cross-Servicing Implementation Guide," revised August 2008, as updated from time-to-time; and
 - v. Any other guidance issued by FMS providing technical specifications for how to refer Debts to the Cross-Servicing Program.
10. **Record Type 6.** "Record Type 6" means the record layout used for sending data to TOP, and includes information regarding what payments should be excluded from offset.
11. **Salary Offset Instruction.** "Salary Offset Instruction" means the salary by-pass indicator used by the Creditor Agency to indicate to TOP whether or not a Debt should be collected through the offset of Federal salary payments. As further specified in the FMS Technical Guidance:
- a. ***No Offset of Federal Salary Payments.*** To direct that FMS not collect a Debt through the offset of Federal salary payments, the Creditor Agency must:

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- i. Transmit the file with a Record Type 6 containing an A in the Action Field and SAL in the Payment Bypass Indicator Field;
 - ii. Indicate in the Creditor Agency's Agency Profile (i.e., the default settings established by the Creditor Agency) that Federal salary payments should not be offset;
 - iii. Manually check the "salary by-pass" column online through the Debtor Detail Screen; or
 - iv. Follow other relevant guidance in the FMS Technical Guidance regarding how to bypass salary payments.
- b. ***Offset Federal Salary Payments.*** The Creditor Agency directs FMS to collect a Debt through the offset of Federal salary payments as follows:

- i. If the Creditor Agency submits a Debt to FMS without a specific indication that the Debt should not be collected through the offset of Federal salary payments (see paragraph 11.a. of this Attachment A, above), the Creditor Agency has indicated that the Debt should be collected through the offset of Federal salary payments;
- ii. If the Creditor Agency has previously indicated that Federal salary payments not be offset, to indicate that Federal salary payments be offset, the Creditor Agency must:
 - (a) Send a Record Type 6 with a D in the Action Field and SAL in the Payment Bypass Indicator Field;
 - (b) Send a Record Type 6 with a U in the Action Field and SAL in the Payment Bypass Indicator Field; or
 - (c) Indicate in the Creditor Agency's Agency Profile (i.e., the default settings established by the Creditor Agency) that Federal salary payments should be offset; or
- iii. The Creditor Agency must follow other relevant guidance in the FMS Technical Guidance regarding how to offset Federal salary payments.

12. **Treasury Offset Program or TOP.** "Treasury Offset Program" or "TOP" means the FMS's debt matching and payment offset program that uses payment and debt data received from Federal agencies and States to collect delinquent debt from payments disbursed by FMS and other Federal and State disbursing agencies.

13. **Update Records.** "Update Records" means any update, change or modification of information about a Debt previously transmitted by the Creditor Agency. Specifically, "Update Records" includes any update, change or modification of information about such a Debt that is submitted to FMS, by Electronic Transmission, through either a batch or manual process, as further specified by the FMS Technical Guidance.



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE END OF ADMINISTRATIVE FINE CASE # 2567

DATE SCANNED 6/24/13

SCANNER NO. 2

SCAN OPERATOR SES

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